

DOCUMENT RESUME

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[Per Diem at Temporary Station Subsequently Made Permanent].
B-188093. October 18, 1977. 6 pp.

Decision re: Thomas S. Roseburg; by Robert F. Keller, Acting
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Bonneville Power Administration.

Authority: (P.L. 94-22; 89 Stat. 84; 5 U.S.C. 5702(a)). 51
Comp. Gen. 10. 32 Comp. Gen. 87. 49 Comp. Gen. 145. 32 Comp.
Gen. 87. 25 Comp. Gen. 136. 23 Comp. Gen. 342. 30 Comp. Gen.
94. B-167022 (1976). B-176857 (1972). B-139223 (1959).
F.T.R. (PPMR 101-7), para. 1-7.6a.

Betty D. Gillham, an Authorized Certifying Officer of
the Bonneville Power Administration, requested a decision
concerning the propriety of payments of per diem in lieu of
actual subsistence to an employee who was transferred to the
station at which he was performing temporary duty. The employee
may not be paid per diem at the new station after notification
of the transfer. Formal notification of the transfer was not
necessary to terminate the employee's per diem entitlement.
(Author/SC)

*Herbert
Civ. Serv.*

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-188093

DATE: October 18, 1977

MATTER OF: Thomas S. Roseburg - Per diem at temporary station subsequently made permanent

- DIGEST:
1. Employee was transferred to station at which he was performing temporary duty. Employee may not be paid per diem at new station after notification of transfer despite return to old station for weekend because location of permanent duty station is question of fact, not of administrative designation, and short period of return to old station before designated date of transfer does not overcome fact that, after receiving notice of transfer, employee performed the major portion of his duties at the new station.
 2. Employee, transferred to station at which he was performing temporary duty, received sufficient notification of transfer by selection letter signed by official with authority to order transfer. Notice of transfer for per diem purposes is sufficient when it imparts actual knowledge to employee of position and location of transfer. Formal notification of transfer is not necessary to terminate employee's per diem entitlement while on duty at a location to which he is to be transferred. 30 Comp. Gen. 94 (1957).

By a letter dated December 30, 1976, Ms. Letty D. Gillham, an authorized certifying officer at the Bonneville Power Administration (BPA), Department of the Interior, has requested our decision concerning the propriety of certain payments of per diem in lieu of actual subsistence made to Mr. Thomas S. Roseburg, a BPA employee.

The record indicates that from January 26, 1975, through August 15, 1975, Mr. Roseburg was assigned to temporary duty at Lewiston, Idaho. At the time of the temporary duty assignment, Mr. Roseburg was headquartered at Vancouver, Washington, with

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the BPA Division of Engineering and Construction. While on temporary duty, he was selected for a position at Lewiston, with the Division of Operation and Maintenance, and on July 10, 1975, was informed by telephone of his selection. This notification was confirmed by a selection letter which was distributed to all applicants, including Mr. Roseburg. The selection letter, dated July 10, 1975, identified the position and grade to which the claimant was appointed, indicated that transportation of household goods would be paid pursuant to regulations, and set the effective date of the transfer at August 17, 1975. Mr. Roseburg was ordered by the Division of Engineering to travel to Vancouver on August 15, 1975, to return equipment assigned to him, to make a final report concerning his work at Lewiston, and to make personal moving arrangements. On August 16, 1975, he received a copy of SF-50, Notification of Personnel Action, directing his transfer to the position in Lewiston.

Although Mr. Roseburg was informed of his transfer to Lewiston on July 10, 1975, he continued to receive payments of per diem until August 15, 1975, when his period of temporary duty was originally scheduled to end. Noting that decisions of this Office have held that when an employee is permanently transferred to a duty station at which he is already performing temporary duty under competent orders, the transfer is effective on the date he receives notice thereof, the certifying officer asks whether, in light of the above circumstances, such payments of per diem were properly made. She raises a question regarding application of those decisions to Mr. Roseburg's case inasmuch as the work he performed while in Lewiston was not that of the Division of Operation and Maintenance to which he was assigned on August 18, 1975, and because prior to that date he was subject to assignment elsewhere by the Vancouver Division of Engineering and Construction. In connection with that request for a decision, the certifying officer has forwarded a legal opinion suggesting that Lewiston did not become Mr. Roseburg's permanent duty station until August 16, 1975, when he received the form 50 effecting his transfer and that earlier forms of notice were ineffective in terminating his entitlement to per diem while at that location. This legal conclusion is premised, in part, on our holding in 51 Comp. Gen. 10 (1971), and the fact of Mr. Roseburg's return to Vancouver on August 15.

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The rule prohibiting payment of per diem to an employee who receives notice of transfer to a place where he is on temporary duty derives from the statutory provision for payment of per diem to employees on official travel away from their posts of duty contained in 5 U.S.C. 5702(a) (1970), as amended by Public Law 94-22, May 19, 1975, 89 Stat. 84. This authority has been interpreted by the implementing provisions of paragraph 1-7.6a of the Federal Travel Regulations (FPMR 101-7, May 1973), to prohibit an employee from receiving per diem at his permanent duty station.

The location of an employee's permanent duty station for travel and per diem purposes has consistently been held by this Office to be the place at which the employee performs the major portion of his duties and where he is therefore expected to spend the greater part of his time. 32 Comp. Gen. 87 (1952). Administrative officials who have the authority to designate posts of duty for Government employees do not have the discretion to designate a place other than the location where he actually performs the greater part of his duties, for the purpose of giving the employee a greater subsistence allowance. Thus, in determining the employee's actual post of duty, each case is to be decided on its own facts and circumstances, including such factors as the nature of the assignment, the required duties, and the locale in which they are to be performed. 49 Comp. Gen. 145 (1969); 32 id. 87 (1952); 25 id. 136 (1945); 10 id. (1931).

The general rule is that a transfer is effective on the date the individual arrives at the new station. Based on the principles discussed above we have recognized an exception to that rule in the case where an employee is transferred to a place at which he is already on duty. In such circumstance, the transfer is effective on the date the employee receives notice of the intended transfer and he may not thereafter be paid per diem while at that location. 23 Comp. Gen. 342 (1943). This rule is based on the assumption that the employee will be expected to spend the greater part of his time and perform the greater portion of his duties at the new permanent duty station after receipt of the notice of transfer.

The determination of an employee's permanent duty station for purposes of establishing per diem entitlement is a question of the location at which he performs the greater part of his duties and

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is not a matter of what those particular duties might be. Thus, the fact that Mr. Roseburg was attached to the Division of Engineering and Construction while in Lewiston prior to August 18 and that he was not performing under the direction of the Division of Operation and Maintenance to which he was later assigned does not entitle him to per diem while in Lewiston subsequent to notification of the impending transfer. Neither does the fact that the Division of Engineering and Construction could have assigned Mr. Roseburg to duty elsewhere than Lewiston have any bearing on the question of per diem entitlement since he was not in fact assigned to duty at a location other than Lewiston.

One instance in which we have recognized that notice of transfer to the location at which an employee is assigned to temporary duty does not preclude payment to him of per diem while at that location is the case in which an employee returns to his prior duty station to perform substantial duty before the scheduled transfer date. Thus, in 51 Comp. Gen. 10, supra, we recognized that an employee who was notified of transfer to Boston while on duty there could be paid per diem incident to that temporary assignment where he was expected to return to Chicago, his permanent station, for 2 to 3 weeks before the date on which he was to report for permanent duty to Boston. In that case we held that the employee's per diem entitlement did not terminate until he had finished his assignment in Chicago and returned to Boston. This case is cited in the legal analysis provided by the certifying officer in support of the view that Mr. Roseburg is entitled to per diem while in Lewiston prior to August 15 in view of his return to Vancouver for the weekend of August 16 and 17. The exception recognized in 51 Comp. Gen. 10 applies where the employee who is notified of his transfer to a place at which he is on temporary duty is thereafter expected to perform substantial duty at his prior duty station. B-176857, December 22, 1972; B-139223, June 15, 1959. Mr. Roseburg in fact returned to Vancouver on Friday afternoon, August 15, and reported for duty in Lewiston on Monday, August 18. In view of the brevity of his stay and the fact that its purpose appears to have been in large part to permit him to make moving arrangements, we cannot conclude that Mr. Roseburg performed substantial duty at his prior duty station after having been notified while in Lewiston of his imminent transfer to that location.

In the present case, Mr. Roseburg was notified by telephone on July 10, 1975, regarding his transfer to Lewiston. This

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notification was confirmed in writing by the selection letter dated July 10. The certifying officer states that for many years BPA has used the selection letter as a means of notifying employees for their selection for positions and for notifying all other applicants of the selection. The legal opinion forwarded with the certifying officer's decision request suggests that neither of these forms of notice served to terminate Mr. Rosenberg's per diem entitlement while on duty at Lewiston, but that he was given appropriate notice only upon receipt on August 16 of the Standard Form 50 effecting his permanent change of station from Vancouver to Lewiston.

With respect to the form of notice that will serve to terminate an employee's per diem entitlement while on temporary duty at a location to which he is to be transferred, we held in 30 Comp. Gen. 94 (1950) as follows:

"In that connection, you are advised that the above rule prohibiting per diem at a temporary duty station to which the employee has been transferred has never been confined to the date of the employee's receipt of a formal or written notice of the change of his official station, it being sufficient that the employee actually knew officially that his temporary place of duty was to become his permanent duty station. However, the notice to the employee not only must be communicated to him by proper authority but should be definite as to the action being taken so as to leave no doubt in the employee's mind with respect thereto."

In Mr. Roseburg's case some question is raised as to whether the individual who talked with him on July 10 regarding his transfer was a proper authority within the meaning of the above-quoted rule. However, one of the two individuals who signed the selection letter that was mailed to him on that same date had the authority to order his transfer and in fact signed the Standard Form 50. The selection letter itself is clear and precise as to the fact of Mr. Roseburg's selection for transfer to the position in Lewiston effective August 17. Thus it appears that Mr. Roseburg received notice of his intended transfer to Lewiston upon receipt in due course of the July 10 selection letter. Since he was then

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on temporary duty assignment in Lewiston, and since his principal duties were thereafter performed in Lewiston, he was not entitled to per diem while so assigned.

As indicated above, when an employee is transferred to a place at which he is already on duty, the general rule for per diem purposes is that the transfer is effective on the date the employee receives notice of the intended transfer, and he may not thereafter be paid per diem while at that location. In order to eliminate any misunderstanding by an employee as to his per diem rights, his agency at the time it notifies the employee of his transfer, should advise him that notification operates to terminate his per diem entitlement. Further, in order to reduce or eliminate the period of time during which an employee who is transferred to a station where he is already on duty is not able to fully avail himself of relocation benefits to which he may be entitled, the employing agency should, contemporaneously with or shortly after giving notice of the transfer, issue to the employee a travel order authorizing transfer expenses. As soon as possible thereafter, the employing agency should also authorize round-trip travel expenses for the employee between the old and new stations for the purpose of making necessary arrangements in preparation for the transfer. See NOAA Ship DISCOVERER, B-167022, July 12, 1976.

For the reasons detailed above, appropriate action should be taken to recover per diem erroneously paid to Mr. Roseburg while on duty in Lewiston after his receipt of the July 10 selection letter.


Acting Comptroller General
of the United States